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## LETTERS TO THE EDITOR

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### "OUR HONOR *WITHOUT* SHAME WITH JAPAN"

*October 20, 1914.*

SIR,—In the October REVIEW there is a very interesting article by Mr. William Elliot Griffis on "Our Honor and Shame with Japan." Mr. Griffis makes certain statements to which, it seems to me, your attention should be called.

Referring to the recent act of the Legislature of California, relative to the ownership of land by aliens, Mr. Griffis, on page 569, says:

"As a nation and Government we signed a covenant which one State has violated."

"A sectional agitation, in favor of a reversal of our ancient friendship and the violation of treaties, has resulted in one State in a defiance of the Constitution of the United States."

"The recent hostile anti-Japanese legislation in California—race hatred in its most immoral form—violates in spirit and letter the treaty with Japan."

"To violate a treaty is to break the supreme law of the land, and trample on the Constitution of the United States."

The United States Supreme Court in *Chirac v. Chirac*, 2 Wheat. 259, said:

"The power of aliens to hold real estate is regulated by the laws of the State, except in so far as it may be affected by treaties with foreign countries."

In *Beard v. Rowan*, 9 Peters, 301, the United States Supreme Court held that:

"The condition upon which real estate may be held by aliens is a matter resting entirely with the State Legislature." That is, of course, subject to treaty provisions.

When the Legislature of California came to deal with this question last year it enacted a law the second section of which reads as follows:

"All aliens, other than those mentioned in Section I. of this act, may acquire, possess, enjoy, and transfer real property, or any interest therein, in this State, in the manner and to the extent and for the purposes prescribed by any treaty now existing between the Government of the United States and the nation or country of which such alien is a citizen or subject, and not otherwise, and may in addition thereto lease lands in this State for agricultural purposes for a term not exceeding three years."

It will be seen by this that the Legislature of California, in dealing with this question of alien ownership and occupation of lands, has, instead of violating the treaty, distinctly stated that the rights of the aliens

described shall be in accordance with the rights conferred by the treaty, and in addition there shall be other rights: that is, not less than the treaty gives, but more!

It is difficult to understand what Mr. Griffis meant when he stated that by this act we have "violated a treaty" and "trampled on the Constitution of the United States." The United States Government having entered into a treaty with another power, conferring upon citizens of that power certain privileges within the United States, the State of California has, by appropriate legislation, provided that the rights conferred by the treaty shall become part of the statute law of the State of California, and that, in addition to the rights enumerated by the treaty, citizens of the power named in the treaty shall have further and additional rights in the State of California. This act of our Legislature is referred to as part of the "Shame" with which we have fulfilled our duties to Japan.

It is difficult to perceive of any way by which California could have shown herself more submissive to the authority of the United States than by this specific act of her Legislature.

It is unquestionably true that a treaty made under the authority of the United States is the supreme law of the land, and that the Legislature of California cannot, in any possible way, put into effect any law contrary to that treaty; therefore it is difficult to understand how any law of California is breaking the supreme law of the land or "trampling" on the Constitution of the United States. It is quite obvious that there might be differences of opinion regarding the exact nature of the rights conferred by treaty upon the nationals of the various powers with which the United States has made treaties, but this much is certain, that the rights conferred by a treaty made under the authority of the United States cannot be taken away by any act of the Legislature; the Legislature of California did not undertake to enumerate or define the rights that were conferred by the treaty, but simply enacted that whatever those rights are, they should be recognized in California as part of our statute law, and, in addition, further rights should be conferred. How could the people of California more fully make known their complete and hearty recognition and approval of the treaty rights of Japan than by having the Legislature make the provisions of the treaty part of the statute law of the State?

On page 570 Mr. Griffis says, referring to Article VI. of the Constitution of the United States:

"In that august document no provision is more strongly safeguarded against any and all theories of Federalism and State rights, and none is more immune from alteration or the effects of attempted nullification or secession, by States, by judges, courts, legislators, and the politicians."

If the word "legislators," as here used, includes Congress, which is undoubtedly a body of legislators, Mr. Griffis is quite in error, because the United States Supreme Court has repeatedly held that Congress has the power to abrogate treaties. A treaty is no more the supreme law of the land than the laws of the United States, and Congress has repeatedly passed laws which have abrogated existing treaties, and the United States Supreme Court has always maintained that Congress has this power.

In *Thomas v. Gay*, 169 U. S., 262, the United States Supreme Court said:

"It is well settled that an act of Congress may supersede a prior treaty, and that any questions that may arise are beyond the sphere of judicial

cognizance and must be met by the political department of the government."

"An act of Congress is not unconstitutional because it supersedes a prior treaty."—*Stephens v. Cherokee Nation*, 174 U. S., 445.

It was fully maintained by many high legal authorities that our treaty with England was violated when Congress by law provided for the free use of the Panama Canal by our coasting vessels, but no one contended that the Act of Congress was therefore unconstitutional.

It will, therefore, be seen that when Mr. Griffis says that no provision is more strongly safeguarded against attempted nullification by legislators than the provision making treaties the supreme law of the land, he is not in agreement with the Supreme Court of the United States, for that august tribunal has repeatedly held that the legislators in Congress may do just that very thing.

On page 573, Mr. Griffis asks:

"Shall we keep faith and respect our own supreme law of the land?"

I would suggest in answer to this question that so far as California is concerned, having made the provisions of the treaty part of her statute law, it is quite probable that she intends to respect it.

Yours very truly,

"CALIFORNIA."

LOS ANGELES, CAL.

#### APPRECIATION

*November 4, 1914.*

SIR,—I think THE NORTH AMERICAN REVIEW has taken the position in the country equal to the old *Harper's Weekly*. For a great number of years I have always taken a great interest in any articles written by Mr. George Harvey, and he has certainly revived THE NORTH AMERICAN REVIEW, and I believe has made it one of the most popular magazines in the country.

The personal influence of a man like you, Colonel Harvey, is a great asset to any paper, and in addition to that it is a great asset to any country to have a man with such a clear sense to dissect our foibles and also the good traits of our American citizens.

W. A. SADD.

CHATTANOOGA, TENN.